

## Message Text

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PAGE 01     NAIROB 08314 061509Z

64

ACTION COME-00

INFO OCT-01 AF-08 IO-13 ISO-00 FEA-01 AGR-05 CEA-01

CIAE-00 DODE-00 EB-07 FRB-03 H-02 INR-07 INT-05 L-03

LAB-04 NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15

STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01

/102 W

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R 061408Z AUG 76

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC 1614

INFO USDEL MTN GENEVA

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E.O. 11652: N/A

TAGS: ETRD, MTN, KE

SUBJECT: MTN NEGOTIATIONS: CLARIFICATION OF NON-TARIFF MEASURES  
(NTM) REPORTED BY INDUSTRY ADVISORS

REF (A) STATE 171194, (B) STATE 182622

1. FOLLOWING IS REPORT ON EXISTENCE AND EFFECT OF NTM  
DESCRIBED AS DUTY UPLIFT IN REFTELS.

2. EAST AFRICAN COMMUNITY LEGISLATION CONTAINS PROVISIONS  
FOR DUTY UPLIFT IN THE CUSTOMS (DUMPING AND SUBSIDIES)  
ACT OF 1960, REVISED IN 1970. FOR PURPOSES OF THIS  
ACT, IMPORTED GOODS SHALL BE REGARDED AS HAVING BEEN  
"DUMPED" IF THE EXPORT PRICE FROM THE COUNTRY IN WHICH  
THE GOODS ORIGINATED IS LESS THAN THE QUOTE FAIR MAR-  
KET PRICE UNQUOTE OF THE GOODS IN THAT COUNTRY.

3. DETERMINATION OF EXPORT PRICE: IN ARMS-LENGTH TRANS-  
ACTION, EXPORT PRICE IS CONSIDERED TO BE SALES PRICE

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PAGE 02     NAIROB 08314 061509Z

LESS DEDUCTION FOR COST OF INSURANCE AND FREIGHT FROM

POST OF EXPORT TO PORT OF IMPORT PLUS DEDUCTION FOR ANY OTHER CHARGES ATTACHED TO IMPORTER'S BILL WHICH ARE NOT BORNE BY THE PURCHASER. IF THIS PROVISION IS NOT APPLICABLE (E.G. NON-ARMS' LENGTH TRANSACTION), COMMISSIONER GENERAL OF CUSTOMS SHALL DETERMINE EXPORT PRICE BY REFERENCE TO SALES PRICE WITH APPROPRIATE ADJUSTMENTS.

4. DETERMINATION OF FAIR MARKET PRICE: CONSTRUED TO BE THE PRICE AT WHICH COMPARABLE GOODS ARE BEING SOLD IN ORDINARY COURSE OF TRADE IN EXPORTING COUNTRY FOR CONSUMPTION IN THAT COUNTRY. PRICE IS SUBJECT TO NECESSARY ADJUSTMENTS FOR CONDITIONS OF SALE AND TAXATION SO THAT FAIR MARKET PRICE AND EXPORT PRICE REPRESENT PRICES ON TWO SIMILAR SALES.

5. AFTER REVIEWING TEXT OF ABOVE ACT AND TALKING WITH COLLECTOR OF CUSTOMS IN CHARGE OF VALUATION, IT IS CLEAR THAT NTM COVERS ALL IMPORTS AND PERCENTAGE OF UPLIFT IS SUBJECT TO DISCRETION OF CUSTOMS AUTHORITIES. ACCORDING TO COLLECTOR, IMPORTS AFFECTED BY THIS SURCHARGE ARE RELEASED UPON PAYMENT OF DUTY APPLIED TO 100 PERCENT OF INVOICE PRICE. CUSTOMS AUTHORITIES THEN CORRESPOND WITH IMPORTER NOTIFYING HIM OF DISCREPANCY BETWEEN EXPORT PRICE AND ADJUDGE FAIR MARKET PRICE. IMPORTER IS INFORMED OF AD VALOREM DUTY ON FAIR MARKET PRICE AND ASKED TO EITHER REMIT DIFFERENCE OR SUBMIT DOCUMENTATION PROVING THAT DISCREPANCY DOES NOT EXIST.

6. ESTIMATED IMPACT ON U.S. TRADE WITH KENYA: TOTAL IMPORTS FROM U.S. TOTALLED 59.7 MILLION DOLLARS IN 1975. PRINCIPAL ITEMS ARE AIRCRAFT, KRAFT PAPERS, AIRCRAFT PARTS, INSECTICIDES, AIRCRAFT ENGINES, INSECTICIDES AND FUNGICIDES. CALLS TO MAJOR U.S. FIRMS AND KENYAN DISTRIBUTORS OF U.S. EQUIPMENT REVEALED THAT NO RPT. NO OFFICER WAS EVEN AWARE OF DUTY UPLIFT PROVISION. EMBOFF ALSO LEARNED THAT MAJOR KENYAN IMPORTER OF CONSTRUCTION EQUIPMENT, HOLMAN BROS. (PARENT FIRM IN UK), HAD NO EXPERIENCE WITH NTM UNDER DISCUSSION. EMB HAS NO INFO THAT CUSTOMS REGULATIONS ARE BEING LIMITED OFFICIAL USE

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PAGE 03     NAIROB 08314 061509Z

APPLIED IN DISCRIMINATORY MANNER. IF EXISTENCE OF THIS NTM WAS NOTED BY SPECIFIC INDUSTRY SECTOR ADVISORY COMMITTEE, EMB WOULD APPRECIATE LEARNING WHICH FIRM OR GROUP OF FIRMS HAS BEEN ASSESSED THE EXTRA IMPORT CHARGES IN ORDER TO PROVIDE A MORE DETAILED REPORT.

7. MEANWHILE, EMB VIEWS NEGOTIATIONS TO REMOVE NTM BARRIER AS NON-PRODUCTIVE. AUTHORITY TO DETERMINE

VALUE OF IMPORTS IS VERY LOOSELY WORDED AND PROVIDES  
E.A.C. STATES WITH EFFECTIVE PROTECTION AGAINST  
BLATANT DUMPING PRACTICES. MOREOVER, AMENDMENTS  
TO CUSTOMS (DUMPING AND SUBSIDIES) ACT, AS WELL AS  
ALL OTHER CUSTOMS LEGISLATION AFFECTING KENYA'S EXTERNAL  
TRADE, MUST BE NEGOTIATED WITH EAST AFRICAN COMMUNITY  
AUTHORITIES REPRESENTING THREE STATES : KENYA, TANZANIA  
AND UGANDA. THIS PROCEDURE, IN CONTEXT OF MTN TALKS,  
APPEARS EXCESSIVELY COMBERSOME COMPARED TO POTENTIAL  
BENEFITS.

DECONTROL 8/6/77  
MARSHALL

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NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** ECONOMIC COOPERATION, CUSTOMS DUTIES, NEGOTIATIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 06 AUG 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** saccheem  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
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**Original Handling Restrictions:** n/a  
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**TAGS:** ETRD, KE, MTN  
**To:** STATE  
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